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1 UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
2 SOUTHERN DIVISION

-----X

3 In re HEALTHSOUTH CORPORATION MASTER FILE NO.
SECURITIES LITIGATION, CV-03-BE-1500-S

4 -----X

This Document Relates To: All Actions

5 -----X

In re HEALTHSOUTH CORPORATION CONSOLIDATED NO.
6 STOCKHOLDER LITIGATION CV-03-BE-1501-S

7 This Document Relates To: All Actions

-----X

8 In re HEALTHSOUTH CORPORATION CONSOLIDATED NO.
BONDHOLDER LITIGATION CV-03-BE-1502-S

9

This Document Relates To: All Actions

10 -----X

IN THE CIRCUIT COURT OF JEFFERSON COUNTY,
11 ALABAMA (HEALTHSOUTH CORPORATION 2002 DERIVATIVE
LITIGATION)

12 -----X

WADE TUCKER, derivatively for the Benefit of
13 and on behalf of the Nominal Defendant
HealthSouth Corporation,

14

Plaintiff,

15 CIVIL ACTION NUMBER

- against - CV0-02-5212

16 RICHARD M. SCRUSHY, et al.,

17 Defendants.

18 -----X

UBS SECURITIES, L.L.C.,

19

Counterclaim Plaintiff,

20

- against -

21

HEALTHSOUTH CORPORATION,

22

Counterclaim Defendant.

23 -----X

CONFIDENTIAL DEPOSITION OF RODERICK O'NEIL

24

25

17 ten copies, and I know there are more
18 people here than ten. There are fewer
19 parties here than ten. So each party will
20 be entitled to at least one copy of each
21 document I mark.

22 (Plaintiffs' Exhibit 898,
23 Memorandum, dated March 27, 2001, to
24 Leveraged Finance Commitment Committee and
25 Credit Risk Management Americas, Bates
0206

1 Numbers UBS/HS 00550584 to 587, marked for
2 identification.)

3 BY MR. HYMER:

4 Q. Mr. O'Neil, I'm showing you what I
5 marked as Exhibit 898.

6 MS. BARENHOLTZ: Wait till I have a
7 copy, please.

8 Q. This is a Memorandum dated March 27,
9 2001, to the leveraged finance committee and
10 the credit risk management Americas; is that
11 correct?

12 A. Yes.

13 Q. And you are copied on this document;
14 is that right?

15 A. Yes.

16 Q. And do you recall -- do you remember
17 receiving this document?

18 A. I do not.

19 Q. All right. Do you have any reason
20 to believe that you did not receive this
21 document?

22 A. No.

23 Q. You notice that in the second
24 paragraph under "Executive Summary,"
25 HealthSouth is described as a key relationship
0207

1 for CFD and LFG."

2 Do you see that?

3 A. Yes, sir.

4 Q. And CFD is?

5 A. Corporate Finance Department.

6 Q. And that's the department you and
7 Mr. McGahan worked in --

8 A. Yes.

9 Q. -- is that correct?

10 A. Yes.

11 Q. I'm sorry. I didn't --

12 A. Yes. I'm sorry, yes.

13 Q. Okay. Look, if you will, at the

14 second page of the Exhibit 898.

15 A. Yes. 898, oh, yeah. Yes.

16 Q. Is that right?

17 A. Yes.

18 Q. Down under the heading "Transaction

19 structure," do you see that?

20 A. Um-hum.

21 Q. It states, "HealthSouth has asked

22 UBS Warburg to provide MedCenterDirect with a

23 \$15 million term loan facility.

24 MedCenterDirect will use a portion of the term

25 loan proceeds to pay back existing HealthSouth

0208

1 liabilities."

2 Do you see that?

3 A. Yes.

4 Q. And is that, to your knowledge, an

5 accurate statement of how this loan originated?

6 A. Yes, I believe it is accurate. But

7 I can't remember what the use of proceeds were

8 for. But if it says it's going to be to pay

9 back liabilities, I guess that's right, but I

10 don't recall that.

11 Q. Now, UBS Warburg, was that the name

12 of the investment banking division at UBS?

13 A. That was the name of the investment

14 bank, yes.

15 Q. All right. And that was the entity

16 that you worked for?

17 A. Yes, sir.

18 Q. Did UBS Warburg later become UBS

19 Securities LLC?

20 A. That sounds correct, yes.

21 Q. All right. Look on the third page

22 of the document. Are you there?

23 A. I am, sir.

24 Q. Under "Transaction related issues,"

25 do you see that?

0209

1 A. I do.

2 Q. Where it talks about the disclosure

3 of this loan guarantee?

4 A. Yes.

13 up status, the company's auditors have
14 expressed concerns about MedCenterDirect's
15 ability to refinance outstandings under the
16 facility at maturity. In order to avoid a
17 going concern opinion by the auditors,
18 HealthSouth has asked UBS Warburg to extend the
19 maturity of the facility to MedCenterDirect to
20 March 30, 2002."

21 Do you see that?

22 A. Yes.

23 Q. Do you know who the company's
24 auditors were -- who MedCenterDirect's auditors
25 were?

0215

1 A. I do not recall.

2 Q. Do you have the MedCenterDirect IPO
3 document in front of you over there?

4 A. I do.

5 Q. And I don't remember what exhibit
6 number it is. When you find it, let me know
7 what exhibit number it is for the record.

8 A. 892.

9 Q. Look in that document and see if it
10 identifies who the MedCenterDirect auditor was.

11 A. Ernst & Young.

12 MR. BENNETT: Objection to the form.

13 Q. Now, is that -- to your knowledge,
14 is that statement that "HealthSouth has asked
15 UBS Warburg to extend maturity of the facility
16 to MedCenterDirect to March 30, 2002," was that
17 a correct statement?

18 MR. BENNETT: Objection to the form.

19 A. I believe so, but I don't recall.

20 Q. Right. Now -- and this document was
21 a document obviously that was created by UBS,
22 correct?

23 MS. JORDAN: Objection, lack of
24 foundation.

25 A. This memo?

0216

1 Q. Right.

2 A. Yes.

3 Q. I mean it says it's from Mike Leder,
4 David Barth, Frank Hoerner, and Dan Ladd.
5 Those are UBS employees, correct?

6 A. Correct.

7 Q. Down under the first bullet point it
8 says, "In the second half of 2000, UBS Warburg,
9 together with a group of banks, provided
10 HealthSouth with a 364-day, \$400 million
11 revolving credit facility (the 'Revolver')."

12 Do you see that?

13 A. Yes.

14 Q. And was that an accurate statement
15 to your knowledge?

16 A. Yes.

17 Q. The second bullet, it says, "In
18 connection with the MedCenterDirect
19 transaction, HealthSouth agreed to reduce
20 access to the revolver to 345 million with the
21 objective to reduce UBS Warburg's credit
22 exposure by \$15 million."

23 Do you see that?

24 A. Yes.

25 Q. So in other words, as part of this
0217

1 loan transaction with MedCenterDirect,
2 HealthSouth had agreed that it would reduce its
3 access to its own line of credit in exchange
4 for UBS providing this loan to MedCenterDirect;
5 is that correct?

6 MS. JORDAN: Objection to the form.

7 A. That looks correct.

8 Q. And in each instance when it talks
9 about the party who provided, either the loan
10 to MedCenterDirect, or the credit facility to
11 HealthSouth, it refers to UBS Warburg; is that
12 correct?

13 A. Yes.

14 Q. And again, if you look on the third
15 page of this document, and the last page of
16 this exhibit, which is 899, it identifies
17 HealthSouth as "a core client and a key
18 relationship for CFD and LFG"; is that correct?

19 A. That's what it says, yes.

20 Q. And you would agree with that
21 statement; is that correct?

22 A. Every client is an important key
23 client.

24 Q. Well, if every client is, why would
25 UBS need to include that in the memo?

0218

3 or the previous five years, six years, seven
4 years. I'm not sure.

5 Q. All right. Have I given you
6 Exhibit 900?

7 A. You have.

8 MS. JORDAN: Can we have a copy
9 before you proceed?

10 MR. HYMER: Yes, I'm going to hand
11 it out.

12 Q. If you will turn -- I don't know why
13 it has this front page on it. I guess it was
14 produced like this. But in any event, would
15 you turn to the second page of the Exhibit 900?

16 A. Yes.

17 Q. And you see that this is another one
18 of these memorandums to the leveraged finance
19 committee and the credit risk management.

20 Do you see that?

21 A. Yes.

22 Q. And it's dated March 26, 2002; is
23 that right?

24 A. Yes.

25 Q. And this is -- actually, your name
0226

1 is listed in the "From" section on this
2 memorandum; is that right?

3 A. Yes.

4 Q. Under the heading "Corporate
5 finance"; is that correct?

6 A. Yes.

7 Q. Along with Bill McGahan, Mike Leder,
8 Scott Wollard, and Michael Farrow; is that
9 correct?

10 A. Yes, under corporate finance.

11 MS. JORDAN: Yes, there is others
12 listed for the record.

13 Q. Under "Executive Summary," you see
14 that it says, "The purpose of this memorandum
15 is to obtain approval to increase the amount
16 and extend the maturity of UBS Warburg's
17 existing \$15 million term loan to
18 MedCenterDirect.com Inc.

19 Do you see that?

20 A. Yes.

21 Q. And again, it describes it as UBS
22 Warburg's loan, correct?

23 A. Yes.

24 Q. And the amount by which
25 MedCenterDirect has asked that the loan be
0227

1 increased is \$5 million, correct?

2 A. Yes.

3 Q. And your department, corporate
4 finance, has requested approval of that
5 increase and extension, correct?

6 MS. JORDAN: That's an incorrect
7 statement of what the document says.

8 Q. Is that correct?

9 A. Can you repeat the question?

10 Q. Your group has requested that this
11 extension and increase be approved, correct?

12 MS. JORDAN: Objection to the form.

13 A. When you say "my group," what do you
14 mean by that?

15 Q. Well, where it says "Health care
16 corporate finance department," CFD, you have
17 told me you are CFD?

18 A. Yes.

19 Q. "Is requesting approval of a
20 \$20 million, a \$5 million upsizing 12-month
21 term loan facility (the 'Facility')."

22 That's what I mean by that.

23 A. Yes.

24 Q. All right. So your group was
25 requesting approval of the extension and
0228

1 increase in the loan, correct?

2 A. The health care corporate finance
3 department which, I believe at this point, had
4 brought in its own leveraged finance division
5 into the group. So, yes.

6 Q. Then, you note that "HealthSouth
7 Corporation, which owns 23 percent of
8 MedCenterDirect, will continue to guarantee
9 100 percent of the loan," correct?

10 A. Yes.

11 MS. JORDAN: Objection to the form.

12 Q. Did Richard Scrushy guarantee any
13 portion of this loan?

14 A. Not that I'm aware of.

15 Q. Did Mike Martin guarantee any
16 portion of this loan?

11 (Plaintiffs' Exhibit 901, Minutes of
12 Leveraged Commitments Committee Meeting,
13 dated March 28, 2002, Bates Numbers UBS/HS
14 00550858 to 859, marked for
15 identification.)

16 BY MR. HYMER:

17 Q. Which is a document dated March 28,
18 2002 titled "Minutes of the leveraged
19 commitments committee meeting," and in the
20 right-hand column, it has "Decision:
21 Approved."

22 Do you see that?

23 A. Yes.

24 Q. And this -- the decision that was
25 approved was the decision to increase the loan
0231

1 to MedCenterDirect from \$15 million to
2 \$20 million and to extend the term of the loan,
3 correct?

4 A. Certainly to upsize from 15 to 20.
5 (Reading.)

6 So definitely to increase the size,
7 and it looks like it was to extend it for 12
8 months. So it's not written that well, but
9 yes.

10 Q. All right. And the -- the committee
11 that approved this indicated that what they
12 were approving was to increase the amount and
13 extend the maturity of UBS Warburg's existing
14 \$15 million term loan to MedCenterDirect.com,
15 correct?

16 A. Yes.

17 MS. JORDAN: Objection to form.

18 Q. And so again, the entity that's
19 referenced as having made the loan was UBS
20 Warburg, correct?

21 MS. JORDAN: In this document.

22 Q. Correct?

23 A. Yes.

24 Q. Is there reference in this document
25 to UBS AG Stamford branch as having made this
0232

1 loan that you can see?

2 A. No, I don't see that anywhere.

3 Q. Were you also involved in
4 transactions relating to First Cambridge?